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RECORDATION NO. _____ FILED & INDEXED

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INTERSTATE ASSIGNMENT OF INTEREST

CONDITIONAL SALE AGREEMENT

Dated as of May 1, 1972

between

GREENVILLE STEEL CAR COMPANY

and

**FIRST SECURITY STATE BANK,
as Trustee**

AGREEMENT AND ASSIGNMENT

Dated as of May 1, 1972

between

GREENVILLE STEEL CAR COMPANY

and

MELLON NATIONAL BANK AND TRUST COMPANY

CONDITIONAL SALE AGREEMENT dated as of May 1, 1972, between GREENVILLE STEEL CAR COMPANY (hereinafter called the Vendor or Manufacturer, as more particularly set forth in Article 26 hereof) and FIRST SECURITY STATE BANK, a Utah corporation (hereinafter sometimes called the Company), as Trustee under a Trust Agreement dated as of May 1, 1972 (hereinafter called the Trust Agreement), with First Security Bank of Idaho, National Association, and First Security Bank of Utah, National Association.

WHEREAS the Manufacturer has agreed to construct, sell and deliver to the Company, and the Company has agreed to purchase, the railroad equipment described in Annex A hereto (hereinafter called the Equipment);

WHEREAS the Company is executing a lease of the Equipment dated as of the date hereof to The Pittsburgh and Lake Erie Railroad Company, as lessee (hereinafter called the Lessee), in substantially the form annexed hereto as Annex C (hereinafter called the Lease); and

WHEREAS the Lessee is assigning to the Company, pursuant to an Assignment of Purchase Agreement dated as of the date hereof in substantially the form annexed hereto as Annex D, a certain purchase agreement or agreements between the Lessee and the Manufacturer covering the Equipment;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Manufacturer will construct the Equipment

at its plant set forth in Annex A hereto and will sell and deliver the Equipment to the Company and the Company will purchase from the Manufacturer and accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be new standard-gauge railroad equipment constructed in accordance with the specifications referred to in Annex A hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Manufacturer and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment will conform to all Interstate Commerce Commission and Department of Transportation requirements and specifications reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. *Delivery.* The Manufacturer will deliver the various units of the Equipment to the Company at the point specified in, and in accordance with, the delivery schedule set forth in Annex A hereto; *provided, however*, that no delivery of any unit of the Equipment shall be made until this Agreement and the Lease have been filed and deposited pursuant to Article 20 hereof.

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before September 30, 1972

(unless such date is extended by the Company and the Vendor by appropriate written agreement), shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion, the Vendor and the Company shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered, accepted and settled for hereunder.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Company (who may be employees of the Lessee), and the Manufacturer shall grant to such inspectors or such authorized representatives reasonable access to its plant. From time to time upon the completion of the construction of each unit or of a number of units of the Equipment, such unit or units shall be presented to such inspector or other authorized representative of the Company for inspection at the place designated for delivery of the Equipment and, if each such unit conforms to the Specifications, such inspector or representative shall execute and deliver to the Manufacturer, in such number of counterparts or copies as may reasonably be requested, a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Company, conform to the Specifications and to all applicable Interstate Commerce Commission and Department of Transportation requirements and specifications and are marked in accordance with the provisions of Article 8 hereof; *provided, however*, that the Manufacturer shall not thereby be relieved of its warranty contained in Article 13 hereof.

On delivery of each of the units of Equipment hereunder and acceptance thereof on behalf of the Company as aforesaid, the Company assumes with respect thereto the responsibility and risk of loss.

ARTICLE 3. *Purchase Price and Payment.* The base price per unit of the Equipment is set forth in Annex A hereto. The base price is subject to such increase or decrease as is agreed to by the Manufacturer, the Company and the Lessee. The term "Purchase Price" as used herein shall mean the base price as so increased or decreased. If on any Closing Date (as hereinafter defined) the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 3) of the units of the Equipment for which settlement has theretofore and is then being made under this Agreement would, but for the provisions of this sentence, exceed \$7,500,000, the Manufacturer (and any assignee of the Manufacturer) and the Company may, at the option of the Company, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for, specified by the Company, as will, after giving effect to such exclusion, reduce such aggregate of the Invoiced Purchase Prices under this Agreement to not more than \$7,500,000.

The Equipment shall be settled for in not more than three groups (the Equipment being settled for in each such group being hereinafter called a Group). The term "Closing Date" with respect to each Group shall mean such date, not earlier than June 1, 1972, occurring not more than ten days following presentation by the Manufacturer to the Company of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Manufacturer and the Lessee by telephonic or telegraphic notice (confirmed in writing) to the Company and the Vendor at least five business days prior to the Closing Date designated therein (or such lesser number of days as may be agreed to by the Company and the Vendor). The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

Subject to the conditions specified in the last paragraph of this Article 3, the Company hereby acknowledges itself

to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) On the Closing Date with respect to each Group (i) an amount equal to 25% of the aggregate Purchase Price of such Group, as set forth in the invoice or invoices therefor (said invoiced purchase price being herein called the Invoiced Purchase Price), plus (ii) the amount by which (x) 75% of the aggregate Invoiced Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore and is then being made exceeds (y) the sum of \$5,625,000, and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to clause (ii) of this subparagraph (a); and

(b) In 30 consecutive semiannual instalments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Price of the units of the Equipment in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The first instalment of the portion of the Purchase Price of each Group of the Equipment payable pursuant to subparagraph (b) of the preceding paragraph (such portion being herein called the Conditional Sale Indebtedness) shall be payable on April 1, 1973, and subsequent instalments shall be payable semiannually thereafter on each October 1 and April 1, to and including October 1, 1987 (or, if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness in respect of a Group shall

bear interest from the Closing Date upon which such Conditional Sale Indebtedness was incurred at (i) a rate per annum equal to $\frac{1}{2}$ of 1% over the average (determined as hereinafter provided) lowest minimum lending rate publicly quoted by Mellon National Bank and Trust Company for loans of 90-day maturities to substantial commercial borrowers (such lowest rate being hereinafter called the Prime Rate) on that portion of the Conditional Sale Indebtedness payable on the first ten Payment Dates, (ii) a rate per annum equal to $\frac{7}{8}$ of 1% over such average Prime Rate on that portion of the Conditional Sale Indebtedness payable on the eleventh through the twentieth Payment Dates and (iii) a rate per annum equal to $1\frac{1}{4}$ % over such average Prime Rate on that portion of the Conditional Sale Indebtedness payable on the twenty-first through the thirtieth Payment Dates. Such interest shall be payable, to the extent accrued, on April 1 and October 1 of each year, commencing October 1, 1972. To determine the interest rate applicable on each April 1 and October 1 in accordance with the second preceding sentence, there shall be added to such average Prime Rate applicable on such date, the additional rate of interest per annum set forth opposite such date in Part I of Annex B hereto. The interest payable on each April 1 and October 1 shall be the semiannual portion (or other applicable portion in the case of the interest due on October 1, 1972) of an amount equal to (i) the interest rate per annum (determined in the manner set forth above) multiplied by (ii) the unpaid Conditional Sale Indebtedness (determined without regard to the portion of the Conditional Sale Indebtedness, if any, to be paid on such date).

The average Prime Rate applicable on each April 1 and October 1 shall be the weighted average of the Prime Rates (based on the actual number of days during which each Prime Rate was in effect) for the period from the preceding October 1 or April 1, respectively (or from the respective

Closing Dates, in the case of the interest due on October 1, 1972), to and including the 10th day preceding such April 1 or October 1. The Vendor will, not less than 5 days prior to each April 1 and October 1, notify the Company and the Lessee of the average Prime Rate applicable on such April 1 or October 1 and the calculations used in determining such average Prime Rate.

The percentage of the principal amount of Conditional Sale Indebtedness payable on each of the 30 semiannual Payment Dates is set forth in Part II of Annex B hereto.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Company will pay interest at a rate per annum of $1\frac{1}{2}\%$ over the Prime Rate from time to time upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 5 hereof, the Company shall not have the privilege of prepaying the Conditional Sale Indebtedness prior to the dates it becomes due.

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 3) that the Company will furnish that portion of the Purchase Price of each Group of the Equipment as is required under subparagraph (a) of the third paragraph of this Article 3 and that an amount equal to the balance of such Purchase Price shall be paid to the Manufacturer by an assignee of the Manufacturer's right, title and interest under this Agreement pursuant to an agreement and assignment (hereinafter called the Assignment) between the Manufacturer and Mellon National Bank and Trust Company (hereinafter called the Assignee).

It is agreed that the obligation of the Company to pay to the Vendor any amount required to be paid pursuant to subparagraph (a) of the third paragraph of this Article 3 with respect to any Group of Equipment is specifically subject to the following conditions:

(a) no Event of Default under the Lease, nor any event which with the lapse of time and/or notice provided for herein or in the Lease would constitute such an Event of Default shall have occurred and be continuing and no proceedings of the nature specified in clause D or E of § 9 of the Lease shall have been commenced and be continuing;

(b) the Assignee shall have paid or caused to have been paid to the Manufacturer the amounts contemplated to be paid by it as provided in the preceding paragraph of this Article 3 and in the Assignment; and

(c) the Company shall have received signed counterparts of all documents required by the terms of the Assignment to be delivered to the Assignee in respect of payment for such Group of Equipment, the opinion of counsel required by § 14 of the Lease, and such other documents as the Company may reasonably request.

Notwithstanding any other provisions of this Agreement, it is understood and agreed by the Vendor that liability of the Company for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of the third paragraph of Article 3 hereof and Articles 20 and 21 hereof and payments under Article 12 hereof resulting from claims against the Company not related to the ownership by the Company of the Equipment or the leasing thereof to the Lessee, shall not exceed an amount equal to the income and proceeds from the Equipment, and such

payments shall be made by the Company only to the extent that the Company (which term shall, for the purposes of this paragraph, include any assignee of the Company) shall have actually received sufficient "income or proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendor agrees that the Company shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Company as above provided. In addition, the Vendor agrees and understands that the Company (i) makes no representation or warranty, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease in so far as it relates to the Lessee (or any document relative thereto) or of any of the obligations thereunder of the Lessee and (ii) shall have no obligation, duty or other liability whatsoever to see to or be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease against the Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean, if one of the events of default specified in Article 16 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Company at any time after such event and during the continuance thereof: (a) all amounts of rental (or damages under clause (i) of subparagraph (b) of § 9 of the Lease) and amounts in respect of Casualty Occurrences paid for or with respect to the Equipment pursuant to the Lease and payments equivalent to such amounts and (b) any and all payments or proceeds

received by the Company for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and after deducting all costs and expenses of such sale, lease or other disposition, and shall mean at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Company and as shall equal the portion of the Conditional Sale Indebtedness (including payments in respect of Casualty Occurrences) and/or interest thereon then due and payable or due and payable on the date such amounts received by the Company were required to be paid to it pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement. The Vendor agrees that in the event it shall obtain a judgment against the Company for an amount in excess of the amounts payable by the Company pursuant to the limitations set forth in this paragraph, it will limit its execution of such judgment to such amount; *provided, however*, that nothing contained herein limiting the liability of the Company shall derogate from the right of the Vendor to proceed against the Equipment or the Lessee as provided for herein or in the Lease or otherwise for the full unpaid Purchase Price of the Equipment and interest thereon or any other payment due and payable hereunder.

ARTICLE 4. *Title to the Equipment.* The Vendor shall and hereby does retain security title to and property in the Equipment until the Company shall have made all the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Company or the Lessee as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and in-

cluded in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 5 hereof, when and only when the Vendor shall have been paid the full amount of the Purchase Price of all the Equipment, together with interest and all other payments as herein provided, and all the Company's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will execute appropriate instruments confirming such passage to the Company of title to and property in the Equipment free of all liens, security interests and other encumbrances created or retained hereby and deliver such instruments to the Company at its address specified in Article 22 hereof, and will execute in the same manner and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Company to the Equipment, and will pay to the Company any money paid to the Vendor pursuant to Article 5 hereof and not theretofore applied as therein provided.

The Company hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instruments or to file such certificates within a reasonable time after written demand of the Company.

ARTICLE 5. *Casualty Occurrences.* In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, irreparably damaged or damaged beyond economic repair, from any cause whatsoever or taken

or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Company shall, within 14 days after it shall have determined that such unit has suffered a Casualty Occurrence (or as of such earlier date as the Company may receive notice thereof under the Lease), fully inform the Vendor in regard thereto. On the next succeeding April 1 or October 1, whichever is the earlier, the Company shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to the *pro rata* prepayment of each instalment of the Conditional Sale Indebtedness remaining unpaid (in proportion to the principal amount of Conditional Sale Indebtedness represented by each such instalment).

Upon payment by the Company to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Company, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will execute and deliver to the Company, at the expense of the Company, an appropriate instrument confirming such passage to the Company of title to and property in such unit, in recordable form, in order that the Company may make clear upon the public records the title of the Company to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 5), plus

interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of a Group made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of the Equipment in such Group in like ratio as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Group in which such unit is included.

ARTICLE 6. *Maintenance and Repairs.* The Company agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair, reasonable wear and tear excepted.

ARTICLE 7. *Reports and Inspections.* On or before March 1 in each year, commencing with the year 1973, the Company will cause to be furnished to the Vendor an accurate statement as of the preceding January 1 (a) showing the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of delivery hereunder of the Equipment, in the case of the first such statement), and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, and (b) stating that, in the case of all units of the Equipment repainted or repaired during the period covered by such statement, the markings required by Article 8 hereof have been preserved or replaced.

ARTICLE 8. *Identification Marks.* The Company will cause each accepted unit of the Equipment to be kept numbered with its identifying number as set forth in Annex A and will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of such unit, in letters not less than one inch in height, the words, "MELLON NATIONAL BANK AND TRUST COMPANY, PITTSBURGH,

PENNSYLVANIA—SECURITY OWNER”, or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the security title of the Vendor to such unit and the rights of the Vendor under this Agreement. The Company will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such names and word or words which may be removed, defaced or destroyed. The Company will not permit the identifying number of any unit of Equipment to be changed except in accordance with a statement of a new identifying number to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as above provided, the Company will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Company may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Company, the Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of their interests therein.

ARTICLE 9. *Taxes.* All payments to be made by the Company hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal, Canadian (Dominion or Provincial) or Mexican taxes (other than net income, gross receipts, excess profits and similar taxes [except gross receipts taxes in the nature

of or in lieu of sales taxes]), assessments, duties, license fees, charges, fines or penalties of any kind (hereinafter called impositions) hereafter levied or imposed upon, or in connection with, or measured by, this Agreement or any sale, use, payment, shipment, import, export, delivery or transfer of title under the terms hereof, all of which impositions the Company assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Company will also pay promptly all impositions which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any unit of the Equipment; *provided, however*, that the Company shall be under no obligation to pay any imposition so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, materially adversely affect the property or rights of the Vendor hereunder. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Company shall reimburse the Vendor on presentation of invoice therefor.

ARTICLE 10. *Compliance with Laws and Rules.* During the term of this Agreement, the Company will comply, and will cause any lessee of the Equipment to comply, in all respects with all laws of the jurisdictions in which operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Interstate Commerce Commission, the Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the opera-

tion or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Company will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however*, that the Company or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, materially adversely affect the property or rights of the Vendor hereunder.

ARTICLE 11. *Possession and Use.* The Company, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturer to the Company, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Company may lease the Equipment to the Lessee or its assigns as permitted by, and for use as provided in, the Lease; *provided, however*, that the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies of, the Vendor under this Agreement. The Company hereby agrees that it will not exercise any of the remedies provided in the case of any Event of Default under and as defined in the Lease unless it shall notify the Vendor in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Lessee or served by the Lessee upon it in connection therewith.

So long as no event of default shall have occurred and be continuing hereunder, the Company shall be entitled to the possession and use of the Equipment and the Equipment may be used by the Lessee or any affiliated or subsidiary corporation thereof upon the lines of railroad owned or op-

erated by the Lessee or any affiliated or subsidiary corporation thereof or upon lines of railroad over which the Lessee or any affiliated or subsidiary corporation thereof has trackage or other operating rights or over which railroad equipment of the Lessee or any affiliated or subsidiary corporation thereof is regularly operated pursuant to contract, and the Equipment may be used upon other railroads in the usual interchange of traffic (if such interchange is customary at the time), but only upon and subject to all the terms and conditions of this Agreement. The Company may lease the Equipment to any other railroad company with the prior written consent of the Vendor, provided that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement.

ARTICLE 12. *Prohibition Against Liens.* The Company will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Company or its successors or assigns which, if unpaid, might become a lien, charge, security interest or encumbrance upon the Equipment, or any unit thereof, equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, materially adversely affect the property or rights of the Vendor hereunder.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. *Indemnities; Warranty of the Manufacturer.* The Company agrees to indemnify, protect and

hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of or as the result of the entering into or of the performance of this Agreement, the retention by the Vendor of title to the Equipment, or the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment during the period when title thereto remains in the Vendor, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Manufacturer. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of the Equipment and the conveyance of the Equipment, as provided in Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

The Company will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Manufacturer warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 1 hereof and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Lessee and not manufactured by the Manufacturer) and workmanship and design under normal use and service, the Manufacturer's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which shall, within one year after the delivery of such unit, be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective.

The foregoing warranty is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Manufacturer, except for its obligations under Articles 1, 2, 3 and 14 hereof, and the Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

The Manufacturer further agrees with the Company that neither the inspection as provided in Article 2 hereof, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 2 hereof shall be deemed a waiver or a modification by the Company of any of its rights under this paragraph.

ARTICLE 14. *Patent Indemnities.* Except in cases of designs, systems, processes, formulae or combinations specified by the Lessee or the Company and not developed or purported to be developed by the Manufacturer, and articles or materials specified by the Lessee or the Company and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Lessee and the Company from and against any and all liabilities, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Lessee or the Company because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other similar right. The Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Company every

claim, right and cause of action which the Manufacturer has or hereafter shall have against the originator of any design, system, process, formula or combination specified by the Lessee or the Company and not developed or purported to be developed by the Manufacturer or against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials so specified by the Lessee or the Company purchased or otherwise acquired by the Manufacturer for use in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other similar right and the Manufacturer further agrees to execute and deliver to the Company all and every such further assurance as may be reasonably requested by the Company, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Company will give notice to the Manufacturer of any claim known to the Company from which liability may be charged against the Manufacturer hereunder.

ARTICLE 15. *Assignments.* The Company will not assign or transfer its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment unless such assignment or transfer is made expressly subject in all respects to the rights and remedies of the Vendor hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Company, may be assigned by the Vendor and reassigned by its assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to construct and deliver the Equipment in accordance here-

with or to respond to its warranties and agreements contained in Articles 13 and 14 hereof, or relieve the Company of its obligations to the Manufacturer contained in Articles 1, 2, 3, 9 and 13 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Company, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Company of the notification of any such assignment, all payments thereafter to be made by the Company hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

The Company recognizes that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Company expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided the rights of such assignee to the entire unpaid Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff,

counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Equipment or the delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Company against and only against the Manufacturer.

In the event of any such assignment or successive assignments by the Vendor of security title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Company will, whenever requested by such assignee, replace the names and word or words to be marked on each side of each unit of the Equipment so as to indicate the title of an assignee to the Equipment with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on railroad equipment covered by conditional sale agreements. The cost of marking such names and word or words with respect to the first assignee of this Agreement shall be borne by the Manufacturer. The cost of marking such names and word or words in connection with any subsequent assignment (other than to an agent bank or any successor agent bank) shall be borne by the subsequent assignee.

In the event of any such assignment, the Company will, in connection with settlement for any Group of the Equipment, deliver to the assignee of the units of the Equipment in such Group, at least five business days prior to the Closing Date in respect of such Group (or such lesser number of days as such assignee shall agree to), all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement (except for

any opinion of counsel for the assignee), in such number of counterparts as may reasonably be requested.

ARTICLE 16. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Company shall fail to pay in full any sum payable by the Company when payment thereof shall be due hereunder and such default shall continue for 10 days; or

(b) The Company shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) Any proceedings shall be commenced by or against the Company for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Company under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after

such proceedings shall have been commenced, whichever shall be earlier; or

(d) The Company shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(e) An Event of Default shall occur under the Lease;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Company and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) cause the Lease immediately upon such notice to terminate (and the Company acknowledges the right of the Vendor to terminate the Lease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such Purchase Price and such interest shall bear interest from the date of such declaration at a rate per annum of $1\frac{1}{2}\%$ over the Prime Rate from time to time and the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Company (subject to the provisions of the last paragraph of Article 3 hereof) wherever situated.

The Vendor may waive any such event of default and its consequences and rescind any Declaration of Default or notice of termination of the Lease by notice to the Company in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had existed and no Declaration of De-

fault or notice of termination of the Lease had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Company that time is of the essence of this Agreement and that no such waiver or rescission shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. *Remedies.* At any time during a Declaration of Default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Company any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Company or anyone having such possession and use and for such purpose may enter upon the premises of the Company or the Lessee or wherever the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Company or the Lessee, with or without process of law.

In case the Vendor shall demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Lessee for the delivery of the Equipment to the Vendor, the Company shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall reasonably be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines of railroad or premises of the Lessee until the Vendor shall

have leased, sold or otherwise disposed of the same, and in connection therewith the Company agrees to cause to be furnished, without charge for rent or storage, the necessary facilities at any reasonably convenient point or points selected by the Vendor. This agreement to deliver the Equipment as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Company requiring specific performance hereof. The Company hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Company by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice within 30 days after a Declaration of Default. In the event that the Vendor should elect to retain the Equipment, and no objection is made thereto within the 30-day period described in the second proviso below, all rights of the Company in the Equipment will thereupon terminate and all payments made by the Company may be retained by the Vendor as compensation for the use of the Equipment; *provided, however*, that if the Company, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid

balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company; and *provided, further, however*, that if the Company or any other person notified under the terms of this paragraph shall object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law.

The Vendor, with or without the retaking of possession thereof, at its election and upon reasonable notice to the Company and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Company, or of any other party (including the Lessee) claiming by, through or under the Company, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however*, that if prior to such sale or prior to the making of a contract for such sale, the Company should tender full payment of the entire indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking, holding and preparing the Equipment for disposition and arrangement for the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company. The proceeds of such sale, or of any lease or other disposition of the Equipment as provided hereunder, less the attorneys' fees and any other expenses

incurred by the Vendor in taking possession of, removing, storing and so disposing of the Equipment, shall be credited against the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine; *provided, however*, that the Company shall be given written notice of such sale as provided hereinabove. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Company (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Company hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay, except where time limits are expressly herein provided, or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

All sums of money realized by the Vendor under the remedies herein provided shall be applied, *first* to the pay-

ment of the expenses and liabilities of the Vendor herein undertaken to be paid, *second* to the payment of interest on the unpaid Purchase Price of the Equipment accrued and unpaid and *third* to the payment of the unpaid Purchase Price of the Equipment. If, after applying as aforesaid all sums of money realized by the Vendor, there shall remain any amount due to it under the provisions of this Agreement, the Company, subject to the provisions of the last paragraph of Article 3 hereof, shall pay the amount of such deficiency to the Vendor upon demand, and, if the Company shall fail to pay the full deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Company. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Company.

The Company, subject to the provisions of the last paragraph of Article 3 hereof, will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

ARTICLE 18. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any state shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Company to the full extent permitted by law, to the end that this

Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Company, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 19. *Extension not a Waiver.* Any extension of time for payment hereunder or other indulgence duly granted to the Company shall not otherwise alter or affect the Vendor's rights or the obligations of the Company hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Company's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 20. *Recording.* Prior to the delivery and acceptance of any unit of the Equipment, the Company will cause this Agreement, any assignments hereof by the Company and any supplements hereto and thereto, and prior to the settlement for such unit, the Company will cause any assignment hereof by the Manufacturer and any supplement thereto, in each case (i) to be filed, registered, recorded or deposited and refiled, reregistered, rerecorded or redeposited, with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and (ii) to be deposited in the office of the Registrar General of Canada (and will cause the required notice of such deposit forthwith thereafter to be published in *The Canada Gazette*) in accordance with Section 86 of the Rail-

way Act of Canada. The Company will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection in the United States and Canada, to the satisfaction of the Vendor and its counsel, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement and any assignment hereof. The Company will promptly furnish to the Vendor evidences of such filing, registering, depositing or recording and of such publication of notice of such deposit and an opinion or opinions of counsel with respect thereto, each satisfactory to the Vendor and its counsel.

ARTICLE 21. *Payment of Expenses.* The Company will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Manufacturer) incident to the preparation and execution of this Agreement and the first assignment of this Agreement and, if the first assignee is not acting as an agent or trustee, any subsequent assignment to such an agent or trustee (including the fees and expenses of such agent or trustee or successor thereto), or any instrument supplemental thereto, including all reasonable fees and expenses of special counsel for the first assignee of this Agreement.

ARTICLE 22. *Notice.* Any notice hereunder to any party designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) the Company: P. O. Box 149, Salt Lake City,
Utah 84110, Attention F. W. Champ, President;

(b) the Manufacturer: P. O. Box 751, Greenville, Pennsylvania 16125;

(c) any assignee of the Vendor, or of the Company: such address as may have been furnished in writing to the Company, or the Vendor, as the case may be, by such assignee;

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. The Company represents and warrants that its chief place of business is in Utah.

ARTICLE 23. *Satisfaction of Undertakings.* The obligations of the Company under Articles 6, 7, 8, 9, 10, 12, 13 and the second paragraph of Article 17 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease except, in respect of Article 12, to the extent excepted pursuant to the first sentence of the last paragraph of Article 3 hereof. The Company shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 16 hereof.

It is understood and agreed, anything herein to the contrary notwithstanding, that (except for the agreement set forth in the last sentence of this paragraph) each of and all the representations, undertakings and agreements herein made on the part of the Company are made and intended not as personal representations, undertakings and agreements by First Security State Bank or for the purpose or with the intention of binding First Security State Bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and no personal liability or responsibility therefor is assumed by or shall at any time be

asserted or enforceable against First Security State Bank, or any beneficiary under the Trust Agreement, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; *provided, however*, that the Vendor, or any person claiming by, through or under the Vendor, making claim hereunder, may look to the Trust Estate for satisfaction of the same. The Company agrees not to enter into any amendment of the Trust Agreement without the prior written consent of the Vendor and the Lessee.

ARTICLE 24. *Effect and Modification of Agreement.* This Agreement and the Annexes hereto exclusively and completely state the rights and agreements of the Vendor and the Company with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor and the Company.

ARTICLE 25. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Utah; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada and such additional rights arising out of the filing, recording, registering or depositing hereof and of any assignment hereof and out of the marking on the Equipment as shall be conferred by the laws of the several jurisdictions in which the Equipment may be located and in which this Agreement or any assignment hereof shall be filed, recorded, registered or deposited.

ARTICLE 26. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment

of any of its rights hereunder, Greenville Steel Car Company and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor or assignors as regards any rights hereunder that are retained or excluded from any assignment; and the term "Manufacturer", whenever used in this Agreement, means, both before and after any such assignment, Greenville Steel Car Company and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 27. *Execution.* This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of May 1, 1972, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their officers or officials thereunto duly authorized, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GREENVILLE STEEL CAR
COMPANY,

[CORPORATE SEAL]

by *G. E. Brewster*
Vice President

Attest:

F. B. Dyson
Assistant Secretary

FIRST SECURITY STATE BANK,
as Trustee,

[CORPORATE SEAL]

by *Robert H. Brown*
First Vice President

Attest:

Charles L. Beaman
Assistant Secretary

STATE OF UTAH,)
 } ss.:
COUNTY OF SALT LAKE)

On this 22nd day of May, 1972, before me personally appeared Robert A. Perry, Jr., to me personally known who, being by me duly sworn, says that he is an Assistant Vice President of FIRST SECURITY STATE BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Hea C. Pearson

My Commission expires

COMMONWEALTH OF PENNSYLVANIA } ss.:
COUNTY OF MERCER

On this 23rd day of May, 1972, before me personally appeared *L.C. Brecht*, to me personally known, who, being by me duly sworn, says that he is a Vice President of GREENVILLE STEEL CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Leora Smith.....
Notary Public

My Commission expires LEORA SMITH, Notary Public
CHERRY CREEK, MERCER COUNTY
My Commission Expires Feb. 21, 1973

ANNEX A

<u>Type</u>	<u>Manufacturer's Specifications</u>	<u>Manufacturer's Plant</u>	<u>Quantity</u>	<u>Road Numbers (inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Delivery</u>
100-ton Gondola Cars	P&L E No. 100, dated December 9, 1971	Greenville, Pa.	500	18500 to 18999	\$15,000	\$7,500,000	May to August, 1972, at Youngstown, Ohio

ANNEX B

PART I

Additional Interest Rate	Date	Additional Interest Rate	Date	Additional Interest Rate	Date
1.14242	October 1, 1980	.94564	October 1, 1972	.94564	April 1, 1973
1.15772	April 1, 1981	.95536	October 1, 1973	.95536	October 1, 1973
1.17542	October 1, 1981	.96582	April 1, 1974	.96582	April 1, 1974
1.19610	April 1, 1982	.97709	October 1, 1974	.97709	October 1, 1974
1.22058	October 1, 1982	.98927	April 1, 1975	.98927	April 1, 1975
1.25000	April 1, 1983	1.00247	October 1, 1975	1.00247	October 1, 1975
1.25000	October 1, 1983	1.01682	April 1, 1976	1.01682	April 1, 1976
1.25000	April 1, 1984	1.03247	October 1, 1976	1.03247	October 1, 1976
1.25000	October 1, 1984	1.04960	April 1, 1977	1.04960	April 1, 1977
1.25000	April 1, 1985	1.06841	October 1, 1977	1.06841	October 1, 1977
1.25000	October 1, 1985	1.08917	April 1, 1978	1.08917	April 1, 1978
1.25000	April 1, 1986	1.09753	October 1, 1978	1.09753	October 1, 1978
1.25000	October 1, 1986	1.10685	April 1, 1979	1.10685	April 1, 1979
1.25000	April 1, 1987	1.11728	October 1, 1979	1.11728	October 1, 1979
1.25000	October 1, 1987	1.12905	April 1, 1980	1.12905	April 1, 1980

PART II

Principal of Conditional Sale Indebtedness	Payment Date	Principal of Conditional Sale Indebtedness	Payment Date	Principal of Conditional Sale Indebtedness	Payment Date
2.134267%	16	2.196281	2	2.196281	2
	17	2.260096	3	2.260096	3
	18	2.325765	4	2.325765	4
	19	2.393343	5	2.393343	5
	20	2.462884	6	2.462884	6
	21	2.534445	7	2.534445	7
	22	2.608086	8	2.608086	8
	23	2.683867	9	2.683867	9
	24	2.761849	10	2.761849	10
	25	2.842097	11	2.842097	11
	26	2.924677	12	2.924677	12
	27	3.009657	13	3.009657	13
	28	3.097105	14	3.097105	14
	29	3.187095	15	3.187095	15
3.279699%	16	3.279699%	16	3.279699%	16
	17	3.374994	17	3.374994	17
	18	3.473058	18	3.473058	18
	19	3.573971	19	3.573971	19
	20	3.677816	20	3.677816	20
	21	3.784679	21	3.784679	21
	22	3.894646	22	3.894646	22
	23	4.007809	23	4.007809	23
	24	4.124260	24	4.124260	24
	25	4.244095	25	4.244095	25
	26	4.367411	26	4.367411	26
	27	4.494311	27	4.494311	27
	28	4.624897	28	4.624897	28
	29	4.759278	29	4.759278	29
	30	4.897564	30	4.897564	30

ANNEX C

LEASE OF RAILROAD EQUIPMENT

between

**FIRST SECURITY STATE BANK,
as Trustee**

and

**THE PITTSBURGH AND LAKE ERIE
RAILROAD COMPANY**

Dated as of May 1, 1972

LEASE OF RAILROAD EQUIPMENT dated as of May 1, 1972, between FIRST SECURITY STATE BANK, a Utah corporation (hereinafter called the Lessor), as Trustee under a Trust Agreement dated as of May 1, 1972, with FIRST SECURITY BANK OF IDAHO, National Association, and FIRST SECURITY BANK OF UTAH, National Association (hereinafter called the Beneficiaries), and THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, a Delaware corporation (hereinafter called the Lessee).

WHEREAS, the Lessor has entered into a Conditional Sale Agreement dated as of May 1, 1972 (hereinafter called the Conditional Sale Agreement), with Greenville Steel Car Company (hereinafter referred to as the Manufacturer), wherein the Manufacturer agrees to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto; and

WHEREAS, the Manufacturer proposes to assign its interest in the Conditional Sale Agreement to Mellon National Bank and Trust Company (hereinafter referred to as the Vendor); and

WHEREAS, the Lessee desires to lease all the units of said railroad equipment, or such lesser number as are delivered and accepted and settled for under the Conditional Sale Agreement on or prior to September 30, 1972 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder, subject to all the rights and remedies of the Vendor under the Conditional Sale Agreement:

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which, and on the date or dates on which, such Unit is delivered to the Lessor under the Conditional Sale Agreement. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and to execute and deliver to the Lessor and to the Manufacturer a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. In no event shall the Lessee place any Unit in service or otherwise use any Unit prior to the Lessee's acceptance of delivery of such Unit hereunder.

The Lessee represents and warrants that, at the time of delivery of each Unit to the Lessee, such Unit will not have been used by the Lessee and no amortization or depreciation will have been claimed by the Lessee with respect thereto.

§ 2. *Rentals.* Subject to the provisions of the next succeeding paragraph, the Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 31 consecutive semiannual payments, payable on April 1 and October 1 in each year commencing October 1, 1972. The first such semiannual payment shall be in an amount equal to a percentage, equal to the average Prime Rate (as defined in the Conditional Sale Agreement) plus .94564%, of the Purchase Price (as defined in the Conditional Sale Agreement) of each Unit subject to this Lease for each day elapsed from and including the date such Unit is settled for under the Conditional Sale Agreement to October 1, 1972, all divided by 360. The next 30 such semiannual payments

shall each be in an amount equal to the sum of (i) the principal and interest payments then due on the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) and (ii) an amount equal to .1900975% of the Purchase Price of each such Unit.

The Lessor irrevocably instructs the Lessee (and the Lessee hereby agrees) to make all the payments provided for in this Lease in immediately available Pittsburgh funds for the account of the Lessor, c/o the Vendor, and such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Conditional Sale Agreement then due and payable or due and payable on the date such payments are due hereunder and, so long as no default under the Conditional Sale Agreement shall have occurred and be continuing, any balance shall be paid to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatement, reduction or setoff due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Manufacturer or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against use of all or any of the Units by the Lessee or any other person, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of

this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 6, 9 and 12 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, are subordinate, junior in rank and subject to the rights of the Vendor under the Conditional Sale Agreement.

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked

on each side of such Unit, in letters not less than one inch in height, the following words:

“MELLON NATIONAL BANK AND TRUST COMPANY,
PITTSBURGH, PENNSYLVANIA—SECURITY OWNER”

or other appropriate words designated by the Lessor, with appropriate changes therein and additions thereto as from time to time may be required by law in order to protect the title of the Lessor and the Vendor to such Unit and the rights of the Lessor under this Lease and of the Vendor under the Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collec-

tion or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or Canadian (Dominion or Provincial) or Mexican taxes (other than any United States federal income tax and, to the extent that the Lessor receives credit for such taxes against its United States federal income tax liability, any Canadian [Dominion or Provincial] or Mexican income tax, payable by the Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments, duties or license fees, and any charges, fines or penalties in connection therewith (all such expenses, taxes, assessments, duties, license fees, charges, fines and penalties being hereinafter called impositions), hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, import, export, delivery or transfer of title under the terms hereof or of the Conditional Sale Agreement, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. At the option of the Lessor, such payment of impositions by the Lessee shall be made directly to the appropriate taxing authority. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership

thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, materially adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Conditional Sale Agreement. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Manufacturer or the Vendor pursuant to Article 9 of the Conditional Sale Agreement not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations to the Manufacturer and the Vendor pursuant to said Article 9.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and will make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

tinue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor at its option may:

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of the Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such num-

ber of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the use of the Unit during such period, such present value to be computed in each case on a basis of a 5% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to any portion of the 7% investment credit (hereinafter called the Investment Credit) with respect to the Purchase Price of the Units pursuant to Section 38 and related sections of the Internal Revenue Code of 1954, as amended, lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 15 or any other provision of this Lease or the sale or other disposition of the Lessor's

AGREEMENT AND ASSIGNMENT dated as of May 1, 1972, between GREENVILLE STEEL CAR COMPANY (hereinafter called the Manufacturer), and MELLON NATIONAL BANK AND TRUST COMPANY (hereinafter called the Assignee), whose address is Mellon Square, Pittsburgh, Pennsylvania 15230.

WHEREAS, the Manufacturer and FIRST SECURITY STATE BANK (hereinafter called the Company), as Trustee under a Trust Agreement dated as of May 1, 1972, with First Security Bank of Idaho, National Association, and First Security Bank of Utah, National Association, have entered into a Conditional Sale Agreement dated as of May 1, 1972 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Company of the railroad equipment described in Annex A to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Manufacturer hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to each unit of the Equipment;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payment specified in subparagraph (a) of the third paragraph of Article 3 thereof and reimbursement for taxes paid or incurred

by the Manufacturer), and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Company under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer for or on account of the failure of the Company to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Articles 13 and 14 of the Conditional Sale Agreement or relieve the Company from its obligations to the Manufacturer contained in Articles 1, 2, 3, 9 and 13 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Company with respect to the Equipment shall be and remain enforceable by the Company, its successors and assigns, against and only against the Manufacturer. In furtherance of the fore-

going assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Company with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Company in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Assignee and the Company that at the time of delivery of each unit of the Equipment to the Company under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Lessee under the Lease (as such terms are defined in the Conditional Sale Agreement); and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Company; all *subject, however*, to the provisions of the Conditional Sale Agreement

and the rights of the Company thereunder. The Manufacturer will not deliver any of the Equipment to the Company under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price (as that term is defined in the Conditional Sale Agreement) of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Company arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Article 14 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company or the Lessee by the Manufacturer. The foregoing indemnification provision is conditioned upon (1) the Assignee promptly moving or taking other prompt action on the basis of Article 15 of the Conditional Sale Agreement to strike any such defense, setoff, counterclaim or recoupment asserted by the Company or the Lessee and (2) if the court or other body having jurisdiction denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue, the Assignee promptly notifying the Manufacturer of the asserted defense, setoff, counterclaim or recoupment and giving the Manufacturer the right, at the Manufacturer's

expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of designs, systems, processes, formulae or combinations specified by the Company or the Lessee and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Company or the Lessee and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the Equipment, or any unit thereof, of any design, system, process, formula, combination, article or material infringing or claimed to infringe on any patent or other similar right.

The Manufacturer agrees that any amount payable to it by the Company or the Lessee, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest on any units of the Equipment in respect of which the Assignee pays to the Manufacturer the amount to be paid under Section 5 hereof.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Company, in letters not less than one inch in height, the following legend:

“MELLON NATIONAL BANK AND TRUST COMPANY,
PITTSBURGH, PENNSYLVANIA—SECURITY OWNER”.

SECTION 4. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any

tinue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor at its option may:

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of the Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such num-

ber of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the use of the Unit during such period, such present value to be computed in each case on a basis of a 5% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to any portion of the 7% investment credit (hereinafter called the Investment Credit) with respect to the Purchase Price of the Units pursuant to Section 38 and related sections of the Internal Revenue Code of 1954, as amended, lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 15 or any other provision of this Lease or the sale or other disposition of the Lessor's

AGREEMENT AND ASSIGNMENT dated as of May 1, 1972, between GREENVILLE STEEL CAR COMPANY (hereinafter called the Manufacturer), and MELLON NATIONAL BANK AND TRUST COMPANY (hereinafter called the Assignee), whose address is Mellon Square, Pittsburgh, Pennsylvania 15230.

WHEREAS, the Manufacturer and FIRST SECURITY STATE BANK (hereinafter called the Company), as Trustee under a Trust Agreement dated as of May 1, 1972, with First Security Bank of Idaho, National Association, and First Security Bank of Utah, National Association, have entered into a Conditional Sale Agreement dated as of May 1, 1972 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Company of the railroad equipment described in Annex A to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Manufacturer hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to each unit of the Equipment;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payment specified in subparagraph (a) of the third paragraph of Article 3 thereof and reimbursement for taxes paid or incurred

by the Manufacturer), and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Company under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer for or on account of the failure of the Company to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Articles 13 and 14 of the Conditional Sale Agreement or relieve the Company from its obligations to the Manufacturer contained in Articles 1, 2, 3, 9 and 13 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Company with respect to the Equipment shall be and remain enforceable by the Company, its successors and assigns, against and only against the Manufacturer. In furtherance of the fore-

going assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Company with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Company in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Assignee and the Company that at the time of delivery of each unit of the Equipment to the Company under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Lessee under the Lease (as such terms are defined in the Conditional Sale Agreement); and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Company; all *subject, however*, to the provisions of the Conditional Sale Agreement

and the rights of the Company thereunder. The Manufacturer will not deliver any of the Equipment to the Company under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price (as that term is defined in the Conditional Sale Agreement) of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Company arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Article 14 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company or the Lessee by the Manufacturer. The foregoing indemnification provision is conditioned upon (1) the Assignee promptly moving or taking other prompt action on the basis of Article 15 of the Conditional Sale Agreement to strike any such defense, setoff, counterclaim or recoupment asserted by the Company or the Lessee and (2) if the court or other body having jurisdiction denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue, the Assignee promptly notifying the Manufacturer of the asserted defense, setoff, counterclaim or recoupment and giving the Manufacturer the right, at the Manufacturer's

expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of designs, systems, processes, formulae or combinations specified by the Company or the Lessee and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Company or the Lessee and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the Equipment, or any unit thereof, of any design, system, process, formula, combination, article or material infringing or claimed to infringe on any patent or other similar right.

The Manufacturer agrees that any amount payable to it by the Company or the Lessee, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest on any units of the Equipment in respect of which the Assignee pays to the Manufacturer the amount to be paid under Section 5 hereof.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Company, in letters not less than one inch in height, the following legend:

"MELLON NATIONAL BANK AND TRUST COMPANY,
PITTSBURGH, PENNSYLVANIA—SECURITY OWNER".

SECTION 4. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any

other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) shall pay to the Manufacturer an amount equal to that portion of the Invoiced Purchase Price (as defined in said Article 3) of such Group not required to be paid pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there have been delivered to the Assignee and its special counsel hereinafter mentioned (with a signed counterpart to the Company) the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel:

(a) Bill of Sale from the Manufacturer to the Assignee (hereinafter called the Bill of Sale), confirming the transfer hereunder to the Assignee of security title to the units of Equipment in the Group and warranting to the Assignee and to the Company that, at the time of delivery to the Company under the Conditional Sale Agreement, the Manufacturer had legal title to the Equipment and good and lawful right to sell the Equipment and title to the Equipment was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Lessee under the Lease;

(b) Certificate or Certificates of Acceptance with respect to the Equipment in the Group as contemplated by Article 2 of the Conditional Sale Agreement and the Certificate or Certificates of Delivery pursuant to § 1 of the Lease;

(c) Certificate of an officer of the Lessee stating that prior to delivery and acceptance of units of the Equipment in the Group under the Conditional Sale Agreement and the Lease, none of the units of the Equipment was placed in the service of the Lessee or otherwise was used by the Lessee;

(d) Invoices for the Equipment in the Group accompanied by or having endorsed thereon a certification by the Company and the Lessee as to the correctness of the prices of such units as set forth in said invoices;

(e) Opinion dated as of such Closing Date of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee, addressed to the Assignee, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a legal and valid instrument binding upon the parties thereto and enforceable in accordance with its terms, (ii) this Assignment, the Lease, the Collateral Assignment of Lease and Agreement dated as of May 1, 1972 (hereinafter called the Lease Assignment), by and between the Company and the Assignee, and the Lessee's Consent thereto (hereinafter called the Consent) have been duly authorized, executed and delivered by the respective parties thereto and are valid and enforceable instruments binding upon the parties thereto, (iii) this Assignment, in conjunction with the confirming Bill of Sale, is effective to assign and transfer to the Assignee all the rights, titles, interests, powers, privileges and remedies purported to be assigned and transferred to the Assignee by the Manufacturer, (iv) the Equipment in the Group, at the time of delivery thereof to the Company under the Conditional Sale Agreement, was free of all claims, liens, security interests and other

encumbrances except only the rights of the Company under the Conditional Sale Agreement and the rights of the Lessee under the Lease, (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement, this Assignment, the Lease or the Lease Assignment, (vi) the Conditional Sale Agreement, this Assignment, the Lease and the Lease Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, and no other filing, recording or deposit (or giving of notice) is necessary for the protection of the rights hereunder of the Assignee in any state of the United States of America or the District of Columbia and (vii) registration of the Conditional Sale Agreement or this Assignment is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;

(f) Opinion dated as of such Closing Date of counsel for the Company stating that the Conditional Sale Agreement, the Lease and the Lease Assignment have been duly authorized, executed and delivered by the Company and are legal, valid and binding instruments enforceable against the Company in accordance with their terms;

(g) Opinion dated as of such Closing Date of counsel for the Lessee addressed to the Assignee and to the Company, to the effect set forth in clause (iv) of subparagraph (e) above and stating that (i) the Lessee is a duly organized and existing corporation in good standing under the laws of Delaware and has the power and authority to own its property and carry on its business as now conducted, (ii) the Lease and the Consent have

been duly authorized, executed and delivered by the Lessee and are valid and enforceable instruments binding upon the Lessee, (iii) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Lease or the Consent by the Lessee or the consummation of the transactions therein contemplated and (iv) the Conditional Sale Agreement, this Assignment, the Lease and the Lease Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, and no other filing, recording or deposit (or giving of notice) is necessary for the protection of the rights hereunder of the Assignee or of the Company and the Assignee under the Lease in any state of the United States of America or the District of Columbia;

(h) Opinion dated as of such Closing Date of counsel for the Manufacturer addressed to the Assignee to the effect set forth in clauses (iii) and (iv) of subparagraph (e) above and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement, this Assignment and the Bill of Sale have been duly authorized, executed and delivered by the Manufacturer and are valid and binding instruments enforceable against the Manufacturer in accordance with their terms; and

(i) A receipt from the Manufacturer for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 5) required to be made on such Closing Date to the Manufacturer with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Company.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that any agreement is a legal and valid instrument binding upon the parties thereto and enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in subparagraphs (e) and (f) of the first paragraph of this Section 5, counsel may rely as to authorization, execution and delivery by the Manufacturer of the documents executed by it and title to the units of the Equipment in the Group at the time of delivery to the Company upon the opinion of counsel for the Manufacturer. In giving the opinion specified in subparagraph (e) of the first paragraph of this Section 5, counsel may rely, as to any matters governed by the law of any jurisdiction other than New York or the United States, on the opinions of counsel for the Company, the Manufacturer or the Lessee as to such matters.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon payment by the Company of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred under the Conditional Sale Agreement or if any proceedings of the nature described in clause (c) of Article 16 of the Conditional Sale Agreement shall have been commenced and be continuing.

In the event that the payments required to be made by the Assignee herein shall not be paid, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment in the Group with respect to which such payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Company thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Company) it is a valid and existing agreement binding upon the Manufacturer and the Company and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of May 1, 1972, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers or officials duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

GREENVILLE STEEL CAR COMPANY,
[CORPORATE SEAL]
by *GC Brecht*
Attest: *F. Boyer*
Vice President
Assistant Secretary

MELLON NATIONAL BANK AND
TRUST COMPANY,
[CORPORATE SEAL]
by *Wm. C. McLaughlin*
Attest: *William J. Stelling*
Vice President
Assistant Secretary

going assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Company with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Company in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Assignee and the Company that at the time of delivery of each unit of the Equipment to the Company under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Lessee under the Lease (as such terms are defined in the Conditional Sale Agreement); and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Company; all *subject, however*, to the provisions of the Conditional Sale Agreement

and the rights of the Company thereunder. The Manufacturer will not deliver any of the Equipment to the Company under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price (as that term is defined in the Conditional Sale Agreement) of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Company arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Article 14 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company or the Lessee by the Manufacturer. The foregoing indemnification provision is conditioned upon (1) the Assignee promptly moving or taking other prompt action on the basis of Article 15 of the Conditional Sale Agreement to strike any such defense, setoff, counterclaim or recoupment asserted by the Company or the Lessee and (2) if the court or other body having jurisdiction denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue, the Assignee promptly notifying the Manufacturer of the asserted defense, setoff, counterclaim or recoupment and giving the Manufacturer the right, at the Manufacturer's

expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of designs, systems, processes, formulae or combinations specified by the Company or the Lessee and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Company or the Lessee and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the Equipment, or any unit thereof, of any design, system, process, formula, combination, article or material infringing or claimed to infringe on any patent or other similar right.

The Manufacturer agrees that any amount payable to it by the Company or the Lessee, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest on any units of the Equipment in respect of which the Assignee pays to the Manufacturer the amount to be paid under Section 5 hereof.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Company, in letters not less than one inch in height, the following legend:

"MELLON NATIONAL BANK AND TRUST COMPANY,
PITTSBURGH, PENNSYLVANIA—SECURITY OWNER".

SECTION 4. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any

other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) shall pay to the Manufacturer an amount equal to that portion of the Invoiced Purchase Price (as defined in said Article 3) of such Group not required to be paid pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there have been delivered to the Assignee and its special counsel hereinafter mentioned (with a signed counterpart to the Company) the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel:

(a) Bill of Sale from the Manufacturer to the Assignee (hereinafter called the Bill of Sale), confirming the transfer hereunder to the Assignee of security title to the units of Equipment in the Group and warranting to the Assignee and to the Company that, at the time of delivery to the Company under the Conditional Sale Agreement, the Manufacturer had legal title to the Equipment and good and lawful right to sell the Equipment and title to the Equipment was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Lessee under the Lease;

(b) Certificate or Certificates of Acceptance with respect to the Equipment in the Group as contemplated by Article 2 of the Conditional Sale Agreement and the Certificate or Certificates of Delivery pursuant to § 1 of the Lease;

AGREEMENT AND ASSIGNMENT dated as of May 1, 1972, between GREENVILLE STEEL CAR COMPANY (hereinafter called the Manufacturer), and MELLON NATIONAL BANK AND TRUST COMPANY (hereinafter called the Assignee), whose address is Mellon Square, Pittsburgh, Pennsylvania 15230.

WHEREAS, the Manufacturer and FIRST SECURITY STATE BANK (hereinafter called the Company), as Trustee under a Trust Agreement dated as of May 1, 1972, with First Security Bank of Idaho, National Association, and First Security Bank of Utah, National Association, have entered into a Conditional Sale Agreement dated as of May 1, 1972 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Company of the railroad equipment described in Annex A to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Manufacturer hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to each unit of the Equipment;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payment specified in subparagraph (a) of the third paragraph of Article 3 thereof and reimbursement for taxes paid or incurred

by the Manufacturer), and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Company under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer for or on account of the failure of the Company to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Articles 13 and 14 of the Conditional Sale Agreement or relieve the Company from its obligations to the Manufacturer contained in Articles 1, 2, 3, 9 and 13 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Company with respect to the Equipment shall be and remain enforceable by the Company, its successors and assigns, against and only against the Manufacturer. In furtherance of the fore-

going assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Company with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Company in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Assignee and the Company that at the time of delivery of each unit of the Equipment to the Company under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Lessee under the Lease (as such terms are defined in the Conditional Sale Agreement); and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Company; all *subject, however*, to the provisions of the Conditional Sale Agreement

and the rights of the Company thereunder. The Manufacturer will not deliver any of the Equipment to the Company under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price (as that term is defined in the Conditional Sale Agreement) of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Company arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Article 14 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company or the Lessee by the Manufacturer. The foregoing indemnification provision is conditioned upon (1) the Assignee promptly moving or taking other prompt action on the basis of Article 15 of the Conditional Sale Agreement to strike any such defense, setoff, counterclaim or recoupment asserted by the Company or the Lessee and (2) if the court or other body having jurisdiction denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue, the Assignee promptly notifying the Manufacturer of the asserted defense, setoff, counterclaim or recoupment and giving the Manufacturer the right, at the Manufacturer's

expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of designs, systems, processes, formulae or combinations specified by the Company or the Lessee and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Company or the Lessee and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the Equipment, or any unit thereof, of any design, system, process, formula, combination, article or material infringing or claimed to infringe on any patent or other similar right.

The Manufacturer agrees that any amount payable to it by the Company or the Lessee, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest on any units of the Equipment in respect of which the Assignee pays to the Manufacturer the amount to be paid under Section 5 hereof.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Company, in letters not less than one inch in height, the following legend:

"MELLON NATIONAL BANK AND TRUST COMPANY,
PITTSBURGH, PENNSYLVANIA—SECURITY OWNER".

SECTION 4. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any

other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) shall pay to the Manufacturer an amount equal to that portion of the Invoiced Purchase Price (as defined in said Article 3) of such Group not required to be paid pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there have been delivered to the Assignee and its special counsel hereinafter mentioned (with a signed counterpart to the Company) the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel:

(a) Bill of Sale from the Manufacturer to the Assignee (hereinafter called the Bill of Sale), confirming the transfer hereunder to the Assignee of security title to the units of Equipment in the Group and warranting to the Assignee and to the Company that, at the time of delivery to the Company under the Conditional Sale Agreement, the Manufacturer had legal title to the Equipment and good and lawful right to sell the Equipment and title to the Equipment was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Lessee under the Lease;

(b) Certificate or Certificates of Acceptance with respect to the Equipment in the Group as contemplated by Article 2 of the Conditional Sale Agreement and the Certificate or Certificates of Delivery pursuant to § 1 of the Lease;

AGREEMENT AND ASSIGNMENT dated as of May 1, 1972, between GREENVILLE STEEL CAR COMPANY (hereinafter called the Manufacturer), and MELLON NATIONAL BANK AND TRUST COMPANY (hereinafter called the Assignee), whose address is Mellon Square, Pittsburgh, Pennsylvania 15230.

WHEREAS, the Manufacturer and FIRST SECURITY STATE BANK (hereinafter called the Company), as Trustee under a Trust Agreement dated as of May 1, 1972, with First Security Bank of Idaho, National Association, and First Security Bank of Utah, National Association, have entered into a Conditional Sale Agreement dated as of May 1, 1972 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Company of the railroad equipment described in Annex A to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Manufacturer hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to each unit of the Equipment;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payment specified in subparagraph (a) of the third paragraph of Article 3 thereof and reimbursement for taxes paid or incurred

by the Manufacturer), and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Company under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer for or on account of the failure of the Company to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Articles 13 and 14 of the Conditional Sale Agreement or relieve the Company from its obligations to the Manufacturer contained in Articles 1, 2, 3, 9 and 13 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Company with respect to the Equipment shall be and remain enforceable by the Company, its successors and assigns, against and only against the Manufacturer. In furtherance of the fore-

going assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Company with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Company in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Assignee and the Company that at the time of delivery of each unit of the Equipment to the Company under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Lessee under the Lease (as such terms are defined in the Conditional Sale Agreement); and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Company; all *subject, however*, to the provisions of the Conditional Sale Agreement

and the rights of the Company thereunder. The Manufacturer will not deliver any of the Equipment to the Company under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price (as that term is defined in the Conditional Sale Agreement) of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Company arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Article 14 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company or the Lessee by the Manufacturer. The foregoing indemnification provision is conditioned upon (1) the Assignee promptly moving or taking other prompt action on the basis of Article 15 of the Conditional Sale Agreement to strike any such defense, setoff, counterclaim or recoupment asserted by the Company or the Lessee and (2) if the court or other body having jurisdiction denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue, the Assignee promptly notifying the Manufacturer of the asserted defense, setoff, counterclaim or recoupment and giving the Manufacturer the right, at the Manufacturer's

expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of designs, systems, processes, formulae or combinations specified by the Company or the Lessee and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Company or the Lessee and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the Equipment, or any unit thereof, of any design, system, process, formula, combination, article or material infringing or claimed to infringe on any patent or other similar right.

The Manufacturer agrees that any amount payable to it by the Company or the Lessee, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest on any units of the Equipment in respect of which the Assignee pays to the Manufacturer the amount to be paid under Section 5 hereof.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Company, in letters not less than one inch in height, the following legend:

"MELLON NATIONAL BANK AND TRUST COMPANY,
PITTSBURGH, PENNSYLVANIA—SECURITY OWNER".

SECTION 4. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any

other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) shall pay to the Manufacturer an amount equal to that portion of the Invoiced Purchase Price (as defined in said Article 3) of such Group not required to be paid pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there have been delivered to the Assignee and its special counsel hereinafter mentioned (with a signed counterpart to the Company) the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel:

(a) Bill of Sale from the Manufacturer to the Assignee (hereinafter called the Bill of Sale), confirming the transfer hereunder to the Assignee of security title to the units of Equipment in the Group and warranting to the Assignee and to the Company that, at the time of delivery to the Company under the Conditional Sale Agreement, the Manufacturer had legal title to the Equipment and good and lawful right to sell the Equipment and title to the Equipment was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Lessee under the Lease;

(b) Certificate or Certificates of Acceptance with respect to the Equipment in the Group as contemplated by Article 2 of the Conditional Sale Agreement and the Certificate or Certificates of Delivery pursuant to § 1 of the Lease;

(c) Certificate of an officer of the Lessee stating that prior to delivery and acceptance of units of the Equipment in the Group under the Conditional Sale Agreement and the Lease, none of the units of the Equipment was placed in the service of the Lessee or otherwise was used by the Lessee;

(d) Invoices for the Equipment in the Group accompanied by or having endorsed thereon a certification by the Company and the Lessee as to the correctness of the prices of such units as set forth in said invoices;

(e) Opinion dated as of such Closing Date of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee, addressed to the Assignee, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a legal and valid instrument binding upon the parties thereto and enforceable in accordance with its terms, (ii) this Assignment, the Lease, the Collateral Assignment of Lease and Agreement dated as of May 1, 1972 (hereinafter called the Lease Assignment), by and between the Company and the Assignee, and the Lessee's Consent thereto (hereinafter called the Consent) have been duly authorized, executed and delivered by the respective parties thereto and are valid and enforceable instruments binding upon the parties thereto, (iii) this Assignment, in conjunction with the confirming Bill of Sale, is effective to assign and transfer to the Assignee all the rights, titles, interests, powers, privileges and remedies purported to be assigned and transferred to the Assignee by the Manufacturer, (iv) the Equipment in the Group, at the time of delivery thereof to the Company under the Conditional Sale Agreement, was free of all claims, liens, security interests and other

encumbrances except only the rights of the Company under the Conditional Sale Agreement and the rights of the Lessee under the Lease, (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement, this Assignment, the Lease or the Lease Assignment, (vi) the Conditional Sale Agreement, this Assignment, the Lease and the Lease Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, and no other filing, recording or deposit (or giving of notice) is necessary for the protection of the rights hereunder of the Assignee in any state of the United States of America or the District of Columbia and (vii) registration of the Conditional Sale Agreement or this Assignment is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;

(f) Opinion dated as of such Closing Date of counsel for the Company stating that the Conditional Sale Agreement, the Lease and the Lease Assignment have been duly authorized, executed and delivered by the Company and are legal, valid and binding instruments enforceable against the Company in accordance with their terms;

(g) Opinion dated as of such Closing Date of counsel for the Lessee addressed to the Assignee and to the Company, to the effect set forth in clause (iv) of subparagraph (e) above and stating that (i) the Lessee is a duly organized and existing corporation in good standing under the laws of Delaware and has the power and authority to own its property and carry on its business as now conducted, (ii) the Lease and the Consent have

been duly authorized, executed and delivered by the Lessee and are valid and enforceable instruments binding upon the Lessee, (iii) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Lease or the Consent by the Lessee or the consummation of the transactions therein contemplated and (iv) the Conditional Sale Agreement, this Assignment, the Lease and the Lease Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, and no other filing, recording or deposit (or giving of notice) is necessary for the protection of the rights hereunder of the Assignee or of the Company and the Assignee under the Lease in any state of the United States of America or the District of Columbia;

(h) Opinion dated as of such Closing Date of counsel for the Manufacturer addressed to the Assignee to the effect set forth in clauses (iii) and (iv) of subparagraph (e) above and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement, this Assignment and the Bill of Sale have been duly authorized, executed and delivered by the Manufacturer and are valid and binding instruments enforceable against the Manufacturer in accordance with their terms; and

(i) A receipt from the Manufacturer for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 5) required to be made on such Closing Date to the Manufacturer with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Company.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that any agreement is a legal and valid instrument binding upon the parties thereto and enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in subparagraphs (e) and (f) of the first paragraph of this Section 5, counsel may rely as to authorization, execution and delivery by the Manufacturer of the documents executed by it and title to the units of the Equipment in the Group at the time of delivery to the Company upon the opinion of counsel for the Manufacturer. In giving the opinion specified in subparagraph (e) of the first paragraph of this Section 5, counsel may rely, as to any matters governed by the law of any jurisdiction other than New York or the United States, on the opinions of counsel for the Company, the Manufacturer or the Lessee as to such matters.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon payment by the Company of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred under the Conditional Sale Agreement or if any proceedings of the nature described in clause (c) of Article 16 of the Conditional Sale Agreement shall have been commenced and be continuing.

In the event that the payments required to be made by the Assignee herein shall not be paid, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment in the Group with respect to which such payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Company thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Company) it is a valid and existing agreement binding upon the Manufacturer and the Company and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of May 1, 1972, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers or officials duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

GREENVILLE STEEL CAR COMPANY,
[CORPORATE SEAL]
by *GC Brecht*
Attest: *F. Boyer*
Vice President
Assistant Secretary

MELLON NATIONAL BANK AND
TRUST COMPANY,
[CORPORATE SEAL]
by *Wm. C. McLaughlin*
Attest: *William J. Stelling*
Vice President
Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA } ss.:
COUNTY OF MERCER

On this 23rd day of May, 1972, before me personally appeared *H.C. Bracht*, to me personally known, who, being by me duly sworn, says that he is a Vice President of GREENVILLE STEEL CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

..... *Lara Smith*

Notary Public

My Commission expires

..... Lara Smith, Notary Public
Pittsburgh, Pa.
My Commission Expires
October 31, 1972

COMMONWEALTH OF PENNSYLVANIA } ss.:
COUNTY OF ALLEGHENY

On this 23rd day of May, 1972, before me personally appeared *Samuel A. McCaskey*, to me personally known, who, being by me duly sworn, says that he is a Vice President of MELLON NATIONAL BANK AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

..... *Martida B. Bann*

Notary Public

My Commission expires

MARTIDA BANN, Notary Public
Pittsburgh, Allegheny County, Pa.
My Commission Expires
October 31, 1972

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of, the assignment made by the foregoing Agreement and Assignment is hereby acknowledged as of May 1, 1972, and such assignment is hereby consented to.

FIRST SECURITY STATE BANK,
as Trustee

by 
~~And~~ Vice President